



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19159482

Date: JAN. 10, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

We dismissed the Petitioner's appeal. Contrary to the Director's determination, we found that the Petitioner established he was qualified for the underlying immigrant classification as an individual of exceptional ability, but he had not established that a waiver of the required job offer and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed two motions to reconsider, which we dismissed.¹ The matter is again before us on a third motion to reconsider. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

We are dismissing the motion because it does not satisfy the requirements of a motion to reconsider. Here, the subject of the prior decision was our dismissal of the Petitioner's second motion to reconsider. We dismissed the second motion because the Petitioner did not contend that our previous

¹ Our previous decision in this matter was ID# 10621534 (AAO MAR. 26, 2021).

decision dismissing the first motion was made in error based on an incorrect application of law or policy.

In this third motion before us, the Petitioner asserts that to determine the Petitioner's eligibility and merits for a national interest waiver, we relied almost exclusively on a statement submitted with the first motion and ignored a statement submitted the second motion. The Petitioner cites to sections in our second motion referencing both statements and asserts that we did not consider the statement submitted on second motion for merits consideration.

As noted above, we dismissed the second motion because the Petitioner did not establish that we erred in dismissing the first motion. We referenced the statements to describe what is in the record but concluded that the Petitioner did not offer any arguments or refer to any legal authority to demonstrate that we erred in dismissing the first motion.

The Petitioner further alleges that our "failure to consider the record as a whole" in our prior decision violated "[t]he procedural and substantial due process clause, set forth [in] the Fifth and Fourteenth Amendments [to the Constitution of the United States]."² We disagree. By regulation, the scope of a motion is limited to "the prior decision," which in this case is the Petitioner's second motion. 8 C.F.R. § 103.5(a)(1)(i). The Petitioner's latest motion does not address our prior determination that the Petitioner did not specifically identify how our decision to dismiss the first motion was based on an incorrect application of law or policy, nor does it establish that our prior decision was incorrect based on the evidence in the record at the time of the decision.

As the Petitioner has not met the requirements for a motion to reconsider, we affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver.

ORDER: The motion to reconsider is dismissed.

² We note that there are no due process rights implicated in the adjudication of a benefits application or petition. *See Lyng v. Payne*, 476 U.S. 926,942 (1986) (holding that "[w]e have never held that applicants for benefits, as distinct from those already receiving them, have legitimate claim of entitlement protected by Due Process Clause of Fifth or Fourteenth Amendment"). Further, as discussed, the Petitioner has not met its burden of proof, and the appeal and the motions were properly dismissed.